

SEP 03 2013

CC DOCKET NO. 02-6 AND 96-45

August 24, 2013 FCC Mail Room

REQUEST FOR REVIEW BY THE FCC

THIS LETTER IS AN APPEAL

Person to contact to discuss this appeal:

Jack Rienstra
PO Box 432
Hudson, Ohio 44236
330-701-7696 Phone
330-541-2392 Fax
jrien1016@aol.com Email

Applicant Information:

Xenia City School District
Xenia City School District - The Northern Buckeye Education Council

BEN - 129966

SPIN - 143007175

APP# - 837863

FRN - 2363822

Funding Commitment Decision Letter for FY 2012

Appeal Narrative:

FCC Form 471 Application 837863 FRN 2363822

This FRN was denied because "you did not conduct a fair and open competitive bidding process". In addition it is stated that the Superintendent, Deb Piotrowski, participated in discussions with two potential vendors that resulted in providing them with "insider information".

This FRN was for a fiber build that the district was interested in pursuing to replace the existing connectivity. This would provide enhanced educational opportunities for students; however, the additional cost and the feasibility of a vendor being able to provide fiber connectivity for the particular needs of a school district were major considerations for the district.

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The Superintendent explored the feasibility of a fiber build with the incumbent connectivity provider, MVECA, and another vendor, NWOCA, who had extensive experience providing school districts with fiber builds. Both vendors offered to provide their opinions and expertise at a "no cost" basis. It is common practice, that these vendors, which usually act as ISPs for school districts, provide free advice for projects the districts are interested in pursuing, because these type of vendors have the expertise of working on school district requirements and districts have limited resources to pay for these studies.

As was evidenced in the response to the posted Form 470, only one other vendor, Windstream, expressed any interest in this project and they never provided any pricing to the district. As is common knowledge, other vendors are usually hesitant to become involved with school district fiber builds because of the "low cost requirement" and peculiar needs of a school district.

Windstream, was given every opportunity to provide pricing in response to the Form 470 posting. Per **Exhibit 3**, a conference call was conducted with this vendor and the vendor promised to provide pricing within the timeframe requested by the district, so that a review and comparison could take place and final Board approval be obtained prior to the deadline to file the Form 471. **No pricing was ever received from this vendor.** As a result, this vendor could not be considered. Even though the contract with Northern Buckeye was not signed until 03/19/2012, all of the proposal comparisons were needed on March 9, 2012 to prepare them for Board Review on March 12, 2012. Final Board approval occurred on March 19, 2012.

When the Superintendent began to explore the feasibility of a fiber build in late 2011, she explored advice from MVECA and NWOCA. To obtain this advice, she had to provide some of the requirements so that the vendors would have sufficient knowledge to determine the district needs and provide a relevant response **Exhibit 7**.

In no way was this ever intended to provide "insider information" to circumvent the requirements of the Form 470 competitive bidding process. No "quid pro quo" was understood by either vendor for the advice they provided.

As is evidenced in **Exhibit 4**, the Superintendent sought the advice from Jack Rienstra, the district's Erate consultant, to make certain the district was following the proper procedure to comply with Erate guidelines. She states that "she was not familiar with the Erate guidelines" and wanted to make certain that the district "follow (ed) proper procedures" to "protect Erate dollars". She also states that she wants to make certain that "all interested parties (have) a fair chance at presenting their package to us".

In reference to inquiries that were made concerning whether or not the district was providing "insider information" or circumventing a fair competitive bidding process, **Exhibit 5** indicates that the technology coordinators, in a reply to the Treasurer, indicate

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that "WE HAVE NOT started work" and any prior inquiries were only to assist in "the beginning of the engineering phase". Based on this "engineering phase", requirements were determined that were included in the Form 470 to provide **any vendor** the opportunity to bid on the fiber build.

Only three vendors bid on this project. Windstream **never provided any pricing**. The incumbent vendor, MVECA, **did not offer to install a fiber network**, they were going to continue to act as a "third party" for the network of Time Warner. NWOCA's bid was \$158,125.96 and MVECA's bid was \$172,992 and did not provide the same level of bandwidth as the NWOCA proposal and did not include connecting the new schools when they were completed.

NWOCA was chosen because they were the **lowest priced vendor** and because they provided the most bandwidth and had the most experience providing fiber to school districts.

Xenia City School District - IndexBlue Inc.

BEN - 129966

SPIN - 143029142

APP# - 837863

FRN - 2363844

Funding Commitment Decision Letter for FY 2012

Appeal Narrative:

FCC Form 471 Application 837863 FRN 2363844

This FRN was denied because "price was not your primary factor in your vendor selection".

Please reference the comparison matrix. Cost of Eligible expenses is weighted at 35%. Cost of **ineligible expenses** is weighted at 15%. **Both costs must be considered** when selecting a vendor. The added percentage of both costs is 50% (**Exhibit 1**). As a result, cost was the most heavily weighted factor. The applicant, Xenia City School District, was not aware that eligible and ineligible costs could not be added together to arrive at a final cost percentage. Vendor comparisons must take both costs into consideration because one vendor might have a lower eligible cost but their ineligible costs might be very high, making their overall price to provide the service more expensive.

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Subj: **Windstream**
Date: 4/18/2013 11:55:57 A.M. Eastern Daylight Time
From: cfielding@xenia.k12.oh.us
To: Jrien1016@aol.com

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On February 29, 2012 at 10:00 am, I had a conference call with Windstream representatives (one being Ryan Bauserman). Ryan emailed me the attached documents in preparation for the conference call ("20120229090055743" and "Xenia Community Schools - Windstream Overview"). Below is from the meeting invite that was sent to me. During the call, we followed the bulleted points below discussing their company, the District's needs, what their company might be able to provide and what the next steps may be. This call lasted roughly 30 minutes. The call ended with Windstream wanting to do some pricing research on their end and get something back to the District. I made comment that I would review any proposal they wanted to provide, but I needed it quickly because our Board meeting was on March 12, and I had to have contracts and everything in place no later than March 9 (draft agenda items were due February 29) so I needed some time to be able to review and compare. An email was sent to our Treasurer (see attached "email to Brad") from Randall Tate asking to have until Friday, March 2. I told our Treasurer that I had spoken with Ryan and he was aware I would accept and review a proposal. A proposal was never sent to me or our Treasurer so I did not have anything to evaluate.

Christy,

Update to a proposed conference call this morning.....

The primary objective of our meeting will be to discuss Xenia City School District. The better my understanding of what you are trying to accomplish as an organization the better chance Windstream can positively impact your District.

Here are a few topics for us to cover during our time together:

- Discuss Xenia City School District's overall business approach, vision and goals.
- Discuss Xenia City School District's communications infrastructure relative to your existing voice, and data services
- Discussion of Windstream who we are today, and what sets us apart from other telecommunications providers.
- Discuss-Review some options with Windstream VOIP Solutions.
- Suggested next steps...

If there is anything else you would like to add to this agenda, please let me know. Feel free to contact me at 614-304-0057

Respectfully,

Ryan Bauserman

Account Executive- Business Sales | Windstream

ryan.bauserman@windstream.com | windstreambusiness.com

226 N. 5th Street Columbus, Ohio 43215

o: 614-304-0057 | m: 614-557-1064 | f: 614-304-0070

Exhibit 7- FRW 2363822

>>> "Thor Sage" <sage@mveca.org> 5/31/2011 10:59 AM >>>

Deb,

I was hoping to speak to you or get some sort of update on how things are going with respect to your various technology initiatives. Specifically, we'd like to make sure we understand what services Xenia Community Schools will require moving ahead. We'd also like to see if our Managed IP Telephony solution is a good fit for your OSFC projects, what sort of long term planning is in place for application delivery, what sort of bandwidth requirements you'll have, or how we can help facilitate any construction projects associated with fiber optic connectivity. We haven't heard anything from you or Joe for some time, yet we know you have a bunch going on. Please let us know how we can help!

Thanks,

Thor

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Thor Sage

Miami Valley Educational Computer Association

330 East Enon Rd., Yellow Springs, Ohio 45387

937-767-1468 x3101

sage@mveca.orgwww.mveca.org

Christy Fielding

From: Deborah Piotrowski
Sent: Thursday, February 02, 2012 8:23 AM
To: jrien1016@aol.com
Cc: Christy Fielding; Brad McKee; wdspahr@aol.com
Subject: 470

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Jack

Thank you for the call back yesterday and the information you provided.

As I indicated I am not an ERATE guru - thank goodness for people like you. As I also discussed since we are working with a greatly reduced administrative staff including our treasurer and we at times must wear different hats that we are not familiar with I was calling to ask what we needed to do to protect the district Erate dollars and follow proper procedures. So thank you for your patience with my questions. Your explanations were very helpful.

As per your guidance so we can begin to gather bids for our fiber build please place on our 470:

1 GB Ethernet Transport for 9 buildings

You also confirmed the **ENGINEERING** component is **NOT ERATE able** which means we have to carry on with our requisition to have this separate component complete. From what I understand the engineering must be done so those persons bidding on the fiber build have the necessary information they need to BID correctly.

You also indicated a couple of other items:

We have a 28 day window which actually is synonymous with the RFP process we are undergoing in other areas of our district and the 470 is the ERATE form of putting this out for bid. In that 28 day window we may not sign (or take to the board in our case) with anyone who wants to do the fiber build to give all interested parties a fair chance at presenting their package to us so we can take to the board for approval.

If I have mis-represented anything please let me know.

I again thank you for your time.

Deb Piotrowski

Exhibit 5- FRW 2363822

RE: Fiber Build

Deborah Piotrowski

Sent: Friday, January 27, 2012 7:09 AM

To: Brad McKee

Cc: Compton, Fred [fcompton@ralaw.com]; Christy Fielding

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Brad

I will prepare a timeline of events, and forward to erate person, Jack, then set up a call to discuss. We HAVE NOT started work this is the beginning of engineering phase. We discussed this in a meeting with Christy, Joe, you and me over three months ago where process was explained nothing was mentioned in that discussion about what you are posing now.

Ill work on this over the weekend

Connected by DROID on Verizon Wireless

-----Original message-----

From: Brad McKee <bcmckee@xenia.k12.oh.us>
To: Deborah Piotrowski <dpiotrowski@xenia.k12.oh.us>
Cc: "Compton, Fred" <fcompton@ralaw.com>
Sent: Fri, Jan 27, 2012 10:49:35 GMT+00:00
Subject: RE: Fiber Build

Deb,

I think we need to forward this to Jack Rienstra, Xenia's e-rate administrator so that we can have him complete the 470. The only other question that I think I have is, if we request RFP's through the 470 process, I am assuming none of this work has been started?

Brad

From: Joe Prchlik [prchlik@nwoca.org]
Sent: Wednesday, January 25, 2012 12:12 PM
To: Deborah Piotrowski
Subject: RE: Fiber Build

Deb,

There is no question you need to post the fiber build in the 470. You will receive multiple responses to the 470, that will act as your bid (which I believe the document states). You would not receive e-rate funding unless the request for the fiber build is posted on your 470. I agree with everything that the latter states per e-rate.

I have requested from the districts that have done the fiber build the language they used to put it on the 470.

=====

Joe Prchlik

Director of Operations and Technology
Northwest Ohio Computer Association

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Exhibit 1

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Website

Schoolin Sites

Sharp School

SchoolPoint

Cost (35)	1740 hosting after erate same yearly 5 year contract if desired ≈ 2755 1st year (30)	\$2465 after erate hosting 3 year contract Training additional, design included. ≈ 2815 1st year (30)	Year 1 \$2137 Setup, Annual, Host Year 2-5 \$1659 (1534 hosting) Low price if erate ended. Support, training, design assistance included. (35)
Exp. w/ vendor (35)	erate since 2004 1999 unlimited storage. Some in state users. Manage videos Online forms. Google features (analytics). Surveys/blogs and other features nice to have. Nice template options. Ability to customize. Some templates are just pages of words. Backend seems easy to use. Parent portal like "Progress Book" not needed. Set access levels.	Some in state sites. 2001. Templates are simple. Since there is no design fee, we are more limited to custom aspects of site, but would most likely work. On page analytics is nice feature. Design to be used w/ mobile devices. Trying to also be a "Progress Book" type of system which will get confusing for staff & parents. Almost too many features for our IT staff to stay on top of in attempt to unify use. Seems easy to use. Integrates w/ AD. Very nice features but not sure it's what we are looking for at this time.	Able to set access levels. Works directly w/ oneCallNow vendor and wants to integrate services in near future to make communicating w/ parents easier. Several local districts (even require this company). Webpages are quality looking and easy to navigate. Backend is simple to use. Features are excellent. Design assistance. Support multiple languages. Google features. Alumni & athletic setup a plus. Large design part of design fee (35)
Local/ in-state vendor (10)	(30) Mostly out of state sites Alabama (6)	(30) New York (6) and Toronto, CA	Local (10)
Flexible invoicing (5)	Yes (5)	Yes (5)	Yes (5)
Cost of ineligible expenses (15)	Setup 1015 (one time) Online training included Onsite extra. (10)	Online training 350 more if onsite needed No design/setup cost (15)	Minimal mnt. 125 Setup 468 (one time) (15)
= 50%			
	75	80	100

* SchoolPoint chosen for overall cost both erate & ineligible expenses as well as being a local vendor, quality of sites and options and possible future linkage to current notification services.

(2)

Exhibit 1

FRN 2363844

Website cont.

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Comm. School Builder

Foxbright

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Cost
(35)

Approx \$1710 after erate plus mnt.
Set up fee \$250
~ \$3210 1st year

Initial setup costly \$2200
Annual 7300 Mnt. 500 (2160 after erate)
Password protected
online forms } extra ~ 4860 1st year
Surveys
3 year contract

(25)

(20)

Exp. w/
Vendor
(35)

Backend like Foxbright. A few more steps
than others. Teacher pages look like
they could get messy due to layout.
Has ability to do Forms + Blogs. Ability
for school store. Lang. translation.
Design templates didn't look as crisp &
vibrant as some others. Newer to industry.
No local users

No local schools use. Sites look
professional. Can set access
rights. Google features.
Backend mgt. somewhat complicated.
Users access rights

(20)

(20)

Local/
instate
vendor
(10)

Texas (0)

Michigan (0)

Flexible
invoicing
(5)

Yes (5)

Yes (5)

Cost of
ineligible
expenses
(15)

\$1250 Annual maint.

(10)

Part of "extras"
Mnt. 500
Start up 2200

(5)

60

50

= 50%